

**REMARKS**

By this amendment, claims 1-23 and 27-32 are pending in the present application, of which claims 1, 16, 19, 27, 29, 31 and 32 are currently amended. Claims 24-26 have previously been canceled without prejudice or disclaimer. No new matter is introduced.

The Office Action dated September 2, 2010 rejected claims 1-23 and 27-32 under 35 U.S.C. § 103(a) as being unpatentable over *Strietzel* (US 2001/0051517) in view of *Treyz* (US 6,587,835).

**A. 35 U.S.C. § 103(a) Rejection of Claims 1-23 and 27-32 Over *Strietzel* In View Of *Treyz***

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Applicants respectfully traverse the 35 U.S.C. § 103(a) rejection of claims 1-23 and 27-32 over *Strietzel* in view of *Treyz*, because all features of the claims are not disclosed by the applied art, either individually or in combination.

To advance prosecution, Applicants have amended independent claims 1, 16, 19, 27, 29, 31 and 32. Specifically, each of independent claims 1, 16, 31 and 32 recites that “the promotion message further comprises one or more instructions for notifying the accepting communication terminals of a launch of a shared application on the promotion server for access by the accepting communication terminals of a shared media experience.” Accordingly, the promotion message sent by the promotion server includes instructions for notifying the accepting communication terminals or users of a shared application on the promotion server for access to a shared media experience. Applicants submit, as presented below, that neither *Strietzel* or *Treyz* alone, nor the combination of *Strietzel* in view of *Treyz*, discloses or suggests such elements.

*Strietzel* generally discloses a telecommunications advertising means (*Strietzel*, Abstract).

According to the teaching of *Strietzel*:

Telecommunications advertising means 100 is preferably an integral part of a telecommunications service provider's network and comprises an advertisement database 102, processing means 104, and router 106. Advertisement database 102 stores advertisements that can be played to system users at appropriate times based on appropriate criteria. In one implementation, the advertisements may comprise messages that are specific to a certain subscriber, or messages that are advertisements from third party advertisers. Processing means 104 selectively associates at least one advertisement in advertisement database 102 with incoming communications 108. For example, in one implementation processing means 104 associates an advertisement with a source 110 of incoming communication 108. In another implementation, processing means 104 associates an advertisement with a destination 112 associated with incoming communication 108, and, in a further implementation, processing means 104 associates an advertisement with both source 110 and destination 112 of incoming communication 108. In each of the above implementations, processing means 104 may actually associate multiple advertisements with source 110 and/or destination 112 of incoming communication 108, as opposed to a single advertisement. (*Strietzel*, ¶ 21).

More specifically, as acknowledged in the Office Action, *Strietzel* lacks any disclosure or suggestion whereby an advertisement includes an invitation to be reminded prior to a start of an event scheduled to start at a defined start time. (*See, e.g., Office Action*, Page 3) ("The *Strietzel* invention does not specifically disclose the composition of the promotion message). It follows that *Strietzel* also lacks any disclosure or suggestion whereby an advertisement also includes an instruction set for providing notification of a launch of a shared application on the advertising server for access of a shared media experience, as presently claimed.

Instead, the Office Action cites to *Treyz* for such disclosure (*Office Action*, Page 3). *Treyz* generally discloses a system in which a handheld computing device may be used to provide a user with shopping assistance services (*Treyz*, Abstract). The shopping assistance service may allow a user to obtain directory information for a shopping mall (*Treyz*, Abstract). A user may

use the handheld computing device to handle shopping lists, and the handheld computing device may display promotional material based on the shopping lists (*Treyz*, Abstract). The handheld computing device may also be used to obtain information on products being sold in a store (*Treyz*, Abstract). *Treyz* further discloses that reminders and other messages may be sent to the handheld computing device (*Treyz*, Abstract). Additionally, the location of the handheld computing device may be monitored, and services may be provided to the user based on the location of the handheld computing device (*Treyz*, Abstract).

The Office Action cites to column 35, lines 54-67 of *Treyz* for the alleged teaching of “an invitation to request an event reminder.” (*Office Action*, Page 3). The cited portion of *Treyz*, however, discloses as follows:

Screen 446 may contain a calender of upcoming events. For example, information 450 may be provided on an event at a bookstore. If the user is interested in the event, the user may select set reminder option 452. Handheld computing device 12 may store the reminder locally or may store the reminder on a remote server or the like. Just before the event for which the reminder was set, handheld computing device 12 may be used to alert the user to the upcoming event. If the user selects more info option 454, handheld computing device 12 may obtain and display additional information on the event. (*Treyz*, col. 35, ll 54-67).

Therefore, while *Treyz* teaches the provision of a reminder option for a promotion associated with the shopping assistance service, *Treyz* lacks any disclosure or suggestion of the inclusion of one or more instructions for providing notification of a launch of a shared application on the shopping assistance server for access of a shared media experience, as presently claimed.

Therefore, neither *Strietzel* nor *Treyz* disclose or suggest that “the promotion message further comprises one or more instructions for notifying the accepting communication terminals of a launch of a shared application on the promotion server for access by the accepting

communication terminals of a shared media experience,” as presently recited in claims 1, 16, 31 and 32

Further, each of independent claims 19, 27 and 29 recites (i) receipt of a promotion message, wherein the promotion message includes “an invitation to be reminded prior to a start of an event scheduled to start at a defined start time ... , and one or more instructions for providing a notification of a launch of a shared application on the promotion server for access by the apparatus of a shared media experience,” and (ii) receipt of “the notification of the launch of the shared application on the promotion server.” As set forth above, *Strietzel* and *Treyz* both lack any disclosure or suggestion of one or more instructions for notifying the accepting communication terminals of a launch of a shared application on the promotion server for access by the accepting communication terminals of a shared media experience. Accordingly, *Strietzel* and *Treyz* similarly lack any disclosure or suggestion of “one or more instructions for providing a notification of a launch of a shared application on the promotion server for access by the apparatus of a shared media experience,” and receipt of “the notification of the launch of the shared application on the promotion server,” as presently recited in claims 19, 27 and 29.

Additionally, the Examiner asserts that the “content of a promotion message does not patentably affect the scope of the invention and therefore carries no patentable weight in the claim,” and “the composition of the promotion message being an invitation to be reminded of a start time of an event is merely non-functional data in the claim” (See, e.g., *Office Action*, Page 3). However, the Examiner’s reasoning does not withstand scrutiny, because it clearly and incorrectly ignores the use of the “defined start time” in the remainder of the claims. For example, “said promotion server further being configured to cause, at least in part, sending of a reminder for said event to said accepting communication terminals based on said defined start

time included in said promotion message” (Claims 1, 16, 31 and 32), and “[receive/receiving] a reminder signal for said event based on the defined start time included in said promotion message” (Claims 19, 27 and 29). Further, as presently claimed, the promotion message includes “one or more instructions for notifying the accepting communication terminals of a launch of a shared application on the promotion server for access by the accepting communication terminals of a shared media experience” (Claims 1, 16, 31 and 32), and “one or more instructions for providing a notification of a launch of a shared application on the promotion server for access by the apparatus of a shared media experience” and “[receive/receiving] the notification of the launch of the shared application on the promotion server” (Claims 19, 27 and 29). Accordingly, the recited claim elements concerning the content of the promotion message clearly provide “patentable weight” in the present claims.

Moreover, in view of applicable case law and the guidelines of the MPEP, Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness. It is well-settled that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007). In rejecting claim under 35 U.S.C. § 103, the Examiner must provide a factual basis to support the obviousness conclusion. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967); *In re Lunsford*, 357 F.2d 385, 148 USPQ 721 (CCPA 1966); *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970). The Patent Office must give specific reasons why one of ordinary skill in the art would have been motivated to combine the references. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837

F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). “[T]he test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Further, MPEP §2142 notes that:

[t]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. In view of all factual information, the examiner must then make a determination whether the claimed invention “as a whole” would have been obvious at that time to that person. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” ... . However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

The Office Action, however, fails to present objective evidence, based on the teaching of the references as a whole, as to why one of ordinary skill in the art would have been motivated to make the cited combination.

In the case at hand, the Examiner fails to present a sufficient factual basis to support the combination of *Strietzel* in view of *Treyz* as a basis for the obviousness rejection. For example,

*Treyz* teaches a system which is used to assist shoppers in shopping mall or store:

A system is provided in which a handheld computing device may be used to provide a user with shopping assistance services. A shopping assistance service may allow **a user to obtain directory information for a shopping mall**. A user may use the handheld computing device to handle shopping lists. The handheld computing device may display promotional material based on the shopping lists. The handheld computing device may be used to obtain **information on products being sold in a store**. Products may be purchased using wireless financial transactions. Reminders and other messages may be sent to the handheld computing device. The location of the handheld computing device may be monitored. Services may be provided to the user based on the location of the handheld computing device. The handheld computing device may communicate **with communications equipment in retail establishments using a local wireless link**. (*Treyz*, Abstract).

Moreover, according to *Treyz* at column 35, to which the Office Action cites for disclosure of the claimed feature of an invitation or option for a reminder, it is clear that the teaching of *Treyz*

relates to a local service dependent on the location of the user. Specifically, *Treyz* discloses that the calendar of events screen 446 and the reminder option 452 are provided in the context of “a shopping assistance service in a shopping mall environment” (*Treyz*, col. 35, ll. 21-24).

It is apparent, therefore, that the system taught by *Treyz* is related advertising in a local network, whereas the teachings of *Strietzel* relate to global telecommunications systems (e.g., a GSM mobile network) which have completely different technical constraints and technologies. Further, the Examiner’s rejection fails to provide any specific rationale, based on the teachings of the references themselves, for the cited combination of *Strietzel* in view of *Treyz*. This is because the combined teachings of the *Strietzel* and *Treyz* references themselves fail to provide any motivation for one of skill in the art to modify *Strietzel* through the teaching of *Treyz* as suggested by the Examiner. The proposed combination, therefore, is apparently based on the improper use of hindsight considerations in light of the teachings of the claimed invention, and not on information known to those of ordinary skill in the art at the time of the invention.

Accordingly, for at least the foregoing reasons, neither *Strietzel* or *Treyz* alone, nor the combination of *Strietzel* in view of *Treyz*, render independent claims 1, 16, 19, 27, 29, 31 and 32., or claims 2-15, 17-18, 20-23, 28, 30 and 32 depending therefrom, obvious under 35 U.S.C. § 103.

## **B. Conclusion**

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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